

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-192867

DATE: February 26, 1979

MATTER OF: U. S. Divers Company

DLG00995

DIGEST:

[Protest against solicitation restricting procurement as total small business set-aside] is denied where record discloses that reasonable expectation of adequate competition and reasonable prices existed, notwithstanding that only one bid was received from small business concern.

U. S. Divers Company (Divers) protests the total small business set-aside determination for the procurement of MK-12 surface supported diving system diver's mittens and dress suits under invitation for bids (IFB) N60921-78-B-A036, issued August 16, 1978, by the Naval Surface Weapons Center (NSWC), Dahlgren, Virginia. AGC00826

The subject IFB was issued to 23 prospective bidders and notice of the procurement appeared in the Commerce Business Daily. Three firms receiving IFB's submitted bids by the September 14, 1978, opening date. Only one firm was a small business concern. The Navy reports that the bidders mailing list was derived from a suggested source list received from the requiring activity and contained the names of both large and small businesses. On the basis of information available to the requiring activity and the contracting officer, the Navy believed that all firms listed on the suggested bidders mailing list were recognized as having the necessary technical capability to perform the required work.

Counsel for Divers contends that the procurement should not have been set aside for small business concerns on the ground there was no reasonable expectation that offers would be obtained from a sufficient number

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of small business concerns at reasonable prices. Counsel further contends that it is not in the interest of maintaining or mobilizing full productive national defense programs to have a total set-aside and that Divers employs a substantial number of minority members in its organization. Divers also questions the technical capability of small business concerns to produce the suits, stating that the material to be utilized, i.e., Chloroprene, has never been used in the manufacture of such suits.

Defense Acquisition Regulation (DAR) § 1-706.5 (a)(1) (1976 ed.) provides:

"Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual procurement or a class of procurements including but not limited to contracts for maintenance, repair, and construction, shall be set aside for exclusive small business participation (see 1-701.1) if the contracting officer determines that there is reasonable expectation that offers will be received from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-aside shall not be made unless such a reasonable expectation exists. * * * Although past procurement of the item or similar items is also important, it is not the only factor considered in determining whether a reasonable expectation exists."

The contracting officer's decision to set aside a particular procurement exclusively for small business should be made on the basis of the circumstances which exist at the time the decision is made. DeWitt Transfer and Storage Company, B-182635, March 26, 1975, 75-1 CPD 180. These decisions are basically business judgments which require the exercise of broad discretion by the contracting officer. Hawthorne Melody Inc., B-190211, November 23, 1977, 77-2 CPD 406. Thus, the reasonableness of the expectation will not be reevaluated in retrospect,

and our Office will not substitute its judgment for that of the contracting officer in the absence of a clear showing of abuse of discretion. See Simpson Electric Company, B-190320, February 15, 1978, 78-1 CPD 129; Allied Maintenance Corporation, B-188522, October 4, 1977, 77-2 CPD 259.

The record here indicates that there was a reasonable expectation of offers from a sufficient number of small business concerns at reasonable prices even though only one offer was received from a small business concern. When the IFB was issued, it was sent to 23 firms obtained from the bidders mailing list. Although this list contained the names of some large businesses, the Navy reports that it was believed that there were approximately 20 small business firms on the original mailing list. Prior to issuing the IFB, the Navy reports that the specifications and the bidders mailing list were reviewed by the contracting officer, the technical representatives and the NSWC small business specialist to determine whether the proposed procurement was appropriate for set-aside. The previous procurement for similar items resulted in the receipt of bids from four small business concerns.

The record does not support Divers' contention that the material to be used to produce the divers suits, namely, Chloroprene, has not been utilized in the manufacture of such suits in the past and that this factor would affect the number of bids received from small business concerns. The Navy advises that the Chloroprene foam specified in the dress suit specification is a closed cell neoprene rubber made by Rubatex Corporation, the only manufacturer of this material in the United States. The Navy states that this is not a new material but one that has been used by all small and large manufacturers in the fabrication of divers wet and dry suits for many years. Therefore, the Navy contends that any company having prior experience making wet or dry suits with neoprene rubber has the existing technical excellence required to manufacture the dry suits specified.

The fact that only one bid was received in this procurement from a small business concern does not affect the propriety of the determination to make the

set-aside prior to the issuance of the solicitation. In the case of Wyle Laboratories, B-186526, September 7, 1976, 76-2 CPD 223, our Office stated:

"Moreover, we are aware of no legal basis for requiring procuring activities to perform in-depth surveys prior to initiating small business set-asides. The fact that only one bid was received is not dispositive of the issue presented. A small business set-aside is appropriate where, as here, the contracting officer does not abuse his discretion in determining that there was a reasonable expectation of competition to insure reasonable prices."

With regard to the reasonableness of the award price, the Navy advises that the previous contract was awarded at a production unit price of \$276.58 for the dress suits and the other bids for the dress suit production units ranged from \$329 to 581.52. The previous contract unit price for the diver's mittens was \$10.59 and the other bids for the production units ranged from \$29.87 to \$46.00. The present contractor, Diving Unlimited, bid \$285.26 for the dress suits and \$13.68 for the diver's mittens. Thus, there is no basis to question the reasonableness of the price in the instant case and we believe there was a reasonable expectation of adequate competition to insure reasonable prices.

Divers also states that the set-aside determination is not in the interest of maintaining or mobilizing full productive national defense programs and that Divers employs a substantial number of minority members in its firm. These contentions, even if true, do not affect the validity of the contracting officer's determination to set aside the procurement for small business concerns since they are irrelevant to the question of deciding whether there was a reasonable expectation of offers from a sufficient number of small business concerns at reasonable prices. Our review of the record indicates

that the contracting officer, at the time of the decision to totally set aside this procurement for small business, had a reasonable expectation of receiving offers from a sufficient number of small business concerns at reasonable prices. Therefore, we find no legal basis to object to the decision to set aside this procurement for small business concerns.

Accordingly, Divers' protest is denied.

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Deputy Comptroller General
of the United States